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09/872,891	05/31/2001	Sashikanth Chandrasekaran	OI7011112001	3158

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EXAMINER

GOLD, AVI M

ART UNIT	PAPER NUMBER
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2457

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/872,891	Applicant(s) CHANDRASEKARAN ET AL.	
	Examiner AVI GOLD	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to the amendment filed on August 15, 2008. Claims 1-66 are pending.

Response to Amendment

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9, 11, 14-58, 60-63, 65, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller et al., U.S. Patent No. 5,937,165, further in view of Engbersen et al., U.S. Patent No. 5,271,000.

Schwaller teaches the invention substantially as claimed including systems, methods, and computer program products for performance testing of computer networks (see abstract).

As to claims 1, 36, and 40, Schwaller teaches a method, computer program product, and system for predicting the behavior of a workload across a plurality of nodes, comprising:

a) receiving a workload to be executed (col. 9, lines 24-27, Schwaller discloses a script provided);

b) executing the workload on a single node before the workload is sent to a plurality of nodes for execution (fig. 5, col. 9, lines 24-35, Schwaller discloses a script provided to a single endpoint node to be tested on that node);

c) tracing the execution of the workload (fig. 5A, table 2, col. 9, line 46 – col. 10, line 39, Schwaller discloses that the test is monitored);

d) based on a result of the tracing, predicting the behavior of the workload across the plurality of nodes (fig. 5A, col. 3, lines 8-11, col. 25, lines 58-64, Schwaller discloses analyzing the performance and making a prediction with performance measurements);
and

e) outputting the prediction (col. 25, lines 58-64).

Schwaller does not explicitly teach identifying a potential data conflict.

However, Engbersen teaches a method and apparatus for testing and evaluation of distributed networks (see abstract). Engbersen teaches the identification of a potential conflict (col. 7, lines 14-49).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schwaller in view of Engbersen to identify potential data conflict. One would be motivated to do so because it allows for the avoidance of data conflicts in a network.

Regarding claims 2, 37, 41, 55, 60, and 65, Schwaller teaches the method, computer program product, and system of claims 1, 36, 40, 54, 32, and 35 wherein the action of identifying potential data conflicts comprises predicting how many data conflicts will occur (col. 9, line 46 – col. 10, line 39).

Regarding claims 3, 38, 42, 56, 61, and 66, Schwaller teaches the method, computer program product, and system of claims 1, 36, 40, 54, 32, and 35 wherein the action of identifying potential data conflicts comprise predicting types of data conflicts (col. 9, line 46 – col. 10, line 39).

Regarding claim 4, Schwaller teaches the method of claim 3 in which the types of data conflicts comprises a read-write conflict (table 2).

Regarding claim 5, Schwaller teaches the method of claim 3 in which the types of data conflicts are based upon types of operations needed to resolve the data conflicts (table 2).

Regarding claim 6, Schwaller teaches the method of claim 3 in which the different types of data conflicts have differing levels of expense associated with operations needed for data conflict resolution (table 2).

Regarding claims 7, 57, and 62, Schwaller teaches the method and computer program product of claims 1, 54, and 32 in which the potential data conflicts are at the granularity of a data block (table 2).

Regarding claims 8, 39, 43, 58, and 63, Schwaller teaches the method, system, and computer program product of claims 1, 36, 40, 54, and 32 in which the potential data conflicts are identified based upon workload division between sessions (table 2).

Regarding claim 9, Schwaller teaches the method of claim 1 further comprising:

- f) selecting a number of nodes;
- g) dividing the traced execution of the workload across the number of nodes (fig. 5, 5A, Schwaller discloses multiple nodes monitored).

Regarding claim 11, Schwaller teaches the method of claim 9 in which the number of nodes corresponds to an anticipated number of nodes for a distributed computing system (fig. 5, 5A).

Regarding claims 14, 33, 34, and 54, Schwaller teaches a method, computer program product, and system for distributing a workload across a plurality of nodes, the method comprising:

- a) receiving a workload to be executed (col. 9, lines 24-37);

b) executing the workload on a single node before the workload is sent to a plurality of nodes for execution (fig. 5, col. 9, lines 24-35);

c) tracing the execution of the workload (fig. 5A, table 2, col. 9, line 46 – col. 10, line 39);

d) based on a result of the tracing, forming a workload distribution scheme that distributes the workload across the plurality of nodes (fig. 5A, col. 3, lines 8-11, col. 25, lines 58-64); and

e) outputting the workload distribution scheme (col. 25, lines 58-64).

Schwaller does not explicitly teach identifying a potential data conflict.

However, Engbersen teaches the identification of a potential conflict (col. 7, lines 14-49).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schwaller in view of Engbersen to identify potential data conflict. One would be motivated to do so because it allows for the avoidance of data conflicts.

Regarding claims 15, 44, and 49, Schwaller teaches the method, computer program product, and system of claims 14, 33, and 34, wherein the forming the workload distribution scheme comprises determining workload distribution in manner which reduces the potential data conflicts (fig. 5A, table 2, col. 9, line 46 – col. 10, line 39).

Regarding claims 16, 45, and 50, Schwaller teaches the method, computer program product, and system of claims 14, 33, and 34, wherein the workload distribution scheme is based upon data accesses (table 2).

Regarding claim 17, Schwaller teaches the method of claim 16 in which the workload is grouped in the workload distribution scheme to maximize intersection of data access on a same group of nodes (table 2).

Regarding claim 18, Schwaller teaches the method of claim 16 in which the workload is grouped in the workload distribution scheme to minimize intersection of data access across different groups of nodes (table 2).

Regarding claims 19, 46, and 51, Schwaller teaches the method, computer program product, and system of claims 14, 33, and 34, wherein the workload distribution scheme is based upon access frequencies (table 2).

Regarding claim 20, Schwaller teaches the method of claim 19 in which data objects accessed by the workload are associated with weighting factors (table 2).

Regarding claim 21, Schwaller teaches the method of claim 20 in which not all the data objects are associated with same weighting factors (table 2).

Regarding claim 22, Schwaller teaches the method of claim 20 in which a weighted correlation is performed between the data objects and entities that access the data objects (table 2).

Regarding claim 23, Schwaller teaches the method of claim 22 in which the entities that access the data objects comprises sessions (table 2).

Regarding claim 24, Schwaller teaches the method of claim 22 in which subsets of the entities that access the data objects are grouped together (table 2).

Regarding claim 25, Schwaller teaches the method of claim 24 in which a data structure is employed to represent an affinity between one of the entities that access the data objects and another of the entities (table 2).

Regarding claims 26, 47, and 52, Schwaller teaches the method, computer program product, and system of claims 14, 33, and 34 in which the workload comprises data access upon one or more hierarchical objects (figs. 2-5).

Regarding claim 27, Schwaller teaches the method of claim 26 in which tracing the execution of the workload comprises tracing identifiers for the one or more hierarchical objects (figs. 2-5).

Regarding claims 28, 48, and 53, Schwaller teaches the method, computer program product, and system of claims 14, 33, and 34 in which tracing the execution of the workload comprises tracing identifiers associated with entities that access data (table 2).

Regarding claim 29, Schwaller teaches the method of claim 28 in which the entities comprise sessions (table 2).

Regarding claim 30, Schwaller teaches the method of claim 28 in which the workload distribution scheme distributes the workload based upon partitioning of the entities that access data (table 2).

Regarding claim 31, Schwaller teaches the method of claim 30 in which an association is formed between partitioning of the entities that access data and partitioning of one or more applications within the workload (table 2).

Regarding claims 32 and 35, Schwaller teaches a computer program product that includes a medium usable by a processor, the medium comprising a sequence of instructions which, when executed by said processor, causes said processor to execute a process for optimizing the distribution of a workload across a plurality of nodes, the process and system comprising:

- a) receiving a workload to be executed (col. 9, lines 24-27);

b) executing the workload on a single node before the workload is sent to a plurality of nodes for execution (fig. 5, col. 9, lines 24-35);

c) tracing the execution of the workload (fig. 5A, table 2, col. 9, line 46 – col. 10, line 39);

d) based on a result of the tracing, optimizing the distribution of the workload across the plurality of nodes (fig. 5A, col. 3, lines 8-11, col. 25, lines 58-64); and

e) outputting the optimized distribution scheme (col. 25, lines 58-64).

Schwaller does not explicitly teach identifying a potential data conflict.

However, Engbersen teaches the identification of a potential conflict (col. 7, lines 14-49).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schwaller in view of Engbersen to identify potential data conflict. One would be motivated to do so because it allows for the avoidance of data conflicts.

3. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller et al., U.S. Patent No. 5,937,165 and Engbersen et al., U.S. Patent No. 5,271,000, further in view of Martin et al., U.S. Patent No. 6,154,813.

Schwaller teaches the invention substantially as claimed including systems, methods, and computer program products for performance testing of computer networks (see abstract). Engbersen teaches the invention substantially as claimed

including a method and apparatus for testing and evaluation of distributed networks (see abstract).

As to claims 10 and 12, Schwaller and Engbersen teach the method of claim 9.

Schwaller and Engbersen fail to teach the limitation further including the use of modulo division to divide the traced execution of the workload across the number of nodes and the use of a modulo class to represent a node in the number of nodes.

However, Martin teaches a cache management scheme for continuous media data, such as audio or video (see abstract). Martin teaches the use of modulo division (col. 4, lines 1-15, col. 5, lines 46-63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schwaller and Engbersen in view of Martin to use modulo division and a modulo class in association with nodes. One would be motivated to do so because they are efficient ways of organizing nodes.

4. Claims 13, 59, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller et al., U.S. Patent No. 5,937,165, and Engbersen et al., U.S. Patent No. 5,271,000, further in view of Auvenshine, U.S. Patent No. 6,542,930.

Schwaller teaches the invention substantially as claimed including systems, methods, and computer program products for performance testing of computer networks (see abstract). Engbersen teaches the invention substantially as claimed including a method and apparatus for testing and evaluation of distributed networks (see abstract).

As to claims 13, 59, and 64, Schwaller and Engbersen teach the method and computer program product of claims 1, 54, and 32.

Schwaller and Engbersen fail to teach the limitation further including the potential data conflicts being used to compute costs of migrating the workload to a distributed system.

However, Auvenshine teaches a distributed file system with automated file management achieved by decoupling data analysis and movement operations (see abstract). Auvenshine teaches the use of a distributed system.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schwaller and Engbersen in view of Auvenshine to migrate the workload to a distributed system. One would be motivated to do so because it would still seem as if the system is one local machine.

Response to Arguments

5. Applicant's arguments filed August 15, 2008 have been fully considered but they are not persuasive.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Schwaller discloses network managers having the ability to test the performance of a network in a manner which is representative of actual operating conditions on the network to be tested (column. 3, lines 25-29). Those actual operating conditions, including data conflicts, are also shown in Engbersen. The routing conflict of Engbersen is a data conflict, as data is what is routed through the network.

7. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,427,166 to Hurst et al.

U.S. Pat. No. 5,928,344 to Stierli.

U.S. Pat. No. 6,681,251 to Leymann et al.

U.S. Pat. No. 6,442,564 to Frey et al.

U.S. Pat. No. 5,819,033 to Caccavale.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AVI GOLD whose telephone number is (571)272-4002. The examiner can normally be reached on M-F 8:00-5:30 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2457

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Avi Gold

Patent Examiner

Art Unit 2157

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Supervisory Patent Examiner, Art Unit 2457